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FISCAL IMPACT REPORT

SPONSOR Carraro DATE TYPED 2/24/05 HB _____

SHORT TITLE Create Crime of Child Endangerment SB 390

ANALYST Wilson

APPROPRIATION

Appropriation Contained		Estimated Additional Impact		Recurring or Non-Rec	Fund Affected
FY05	FY06	FY05	FY06		
			\$0.1		

Duplicates Appropriation in the General Appropriation Act
 Relates to Appropriation in the General Appropriation Act

SOURCES OF INFORMATION

LFC Files

Responses Received From

- Administrative Office of the Court (AOC)
- Administrative Office of the District Attorney (AODA)
- Attorney General's Office (AGO)
- Corrections Department (CD)
- Public Defender Department (PDD)

SUMMARY

Synopsis of Bill

Senate Bill 390 creates the crime of child endangerment. The crime consists of transporting a child in a motor vehicle while driving under the influence of intoxicating liquor or drugs.

The following penalties apply to the crime of child endangerment:

- 1) Child endangerment not resulting in injury to the child is a third degree felony.
- 2) Child endangerment resulting in injuring to the child is a second degree felony.
- 3) Child endangerment resulting in great bodily harm to the child or the child's death is a first degree felony.

Significant Issues

The AGO provided the following:

- SB 390 may conflict with the child abuse statute, Section 30-6-1, because both statutes focus on the danger of injury to a child. This bill is more specific as only applying in the context of a motor vehicle with an intoxicated driver. Also, this bill does not require the showing that the driver actually endangered the child's life or health, as required by current law.
- It is unclear whether a conviction for a DWI, under Section 66-8-102, is necessary to justify a conviction for child endangerment.
- A distinction should be made that each child requires a separate conviction. Court decisions have only allowed one charge of child abuse although a number of children were in the car driven by an intoxicated driver.
- Another issue may arise concerning whether the child endangerment crime is a separate offense from the DWI charge. An argument could be made that the unitary conduct of DWI merges any convictions for child endangerment and DWI. It may be helpful to state specifically in this bill that this new crime is a separate and distinct offense.
- Vehicular homicide is currently a third degree felony and may conflict with the provision that the death of a child caused by the DWI driver is a first-degree felony. The conflict will arise whether the more specific law is the vehicular homicide law or the child endangerment law. The rule of lenity, any ambiguity is interpreted in favor of a defendant, will apply, thereby imposing the third degree felony sentence included in vehicular homicide.

FISCAL IMPLICATIONS

There will be a minimal administrative cost for statewide update, distribution, and documentation of statutory changes. Any additional fiscal impact on the judiciary would be proportional to the enforcement of this law and commenced prosecutions. New laws, amendments to existing laws, and new hearings have the potential to increase caseloads for the district attorneys, the public defenders and the courts, thus requiring additional resources to handle the increase..

The bill will probably cause a minimal to moderate increase in convictions for these new crimes and result in minimal to moderate increases in t prison populations and probation and parole caseloads.

DW/yr